

**Information About Art Claimant**

Art Claimant's Name: Earl Davis

Art Claimant's Address: 6 Horizon Road, Apt. 2906  
Fort Lee, New Jersey 07024

Art Claimant's phone number: 201-969-2279

Art Claimant's email address: mellowpad@earthlink.net

Agent or Representative's Name: Dean R. Nicyper, Esq.

Agent or Representative's Address: Flemming Zulack Williamson Zauderer LLP  
One Liberty Plaza  
New York, New York 10006

Agent or Representative's phone number: 212-412-9504

Agent or Representative's email address: dnicyper@fzwz.com

The Art Claimant is a(n) ☒ x consignor.  
☐ artist.  
☐ artist's estate.  
☒ x artist's heir.  
☐ artist's representative.  
☐ purchaser.  
☐ other (please specify) \_\_\_\_\_.

**Information About Artwork**

**Three Works:**

1. "Cool Papa"

ID Number of Artwork from Inventory List: SOR#2587; Triax Tag #0516

Name of Artwork: "Cool Papa"

Name of Artist: Stuart Davis

Estimated Value of Artwork: Approx. estimate: \$5,500.00

2. "Stuart David Lithograph"

ID Number of Artwork from Inventory List: Triax Tag #2071

Name of Artwork: Listed by Triax as "Stuart Davis Lithograph," but correct title is:  
"Ivy League"

Name of Artist: Stuart Davis

Estimated Value of Artwork: Aprox. Estimate: \$2,000.00

3. "Unknown"

ID Number of Artwork from Inventory List: SOR#18140; Triax Tag #2761

Name of Artwork: Listed as Triax as "Unknown," but correct title is:  
"Study for Drawing #2"

Name of Artist: Stuart Davis

Estimated Value of Artwork: Aprox. Estimate: \$8,000.00

**Describe in Detail the Factual Basis for Your Art Claim**

Earl Davis is the owner of these three works of art. Earl Davis is the heir and only child of the well-known American artist Stuart Davis. These works have never been owned by anyone other than the artist and his family. As owner of hundreds of works created by his father, Earl Davis has managed exhibits, consignments and sales of his father's works of art for decades. During a period of more than 20 years prior to this bankruptcy proceeding, Mr. Davis from time to time delivered or consigned many of his works to Salander O'Reilly Galleries for sales and/or exhibits. All consignments to the Gallery were made pursuant to expressly agreed upon written terms. (See letter agreement dated August 24, 1994 at Ex. A (the most recent written agreement between the parties concerning commissions for works Mr. Davis consigned).)

The three works that are the subject of this Claim works were delivered by Earl Davis to Salander O'Reilly Galleries on May 5, 1999 and April 17, 2001 as items included in two groups of drawings that were received by the Gallery on those dates. (See Exh. B.) These works were never sold, but remained in the Gallery's possession or control since Mr. Davis delivered them to the Gallery. Under Article 12 of New York's Arts & Cultural Affairs Law, these works are trust property held by the Gallery for the sole benefit of Mr. Davis, and are not property of the Debtor's Estate.

In 2006, Mr. Davis made repeated demands to gallery owner and director Lawrence Salander, and to Gallery officer Leigh Morse, that all of the works of art Earl Davis had delivered to the Gallery be returned to him immediately. (See highlighted relevant portions of documents attached hereto at Ex. C.) The three works identified in this Claim, however, were never returned to Mr. Davis. These three works are not Property of the Debtor's Estate, and Mr. Davis alone is entitled to them on at least two grounds as a matter of law. First, the three works are trust property held for the sole benefit of Mr. Davis pursuant to New York's Arts & Cultural Affairs law. Second, even if NYACA did not exist or had it not applied here, the works were part of a consignment that was terminated in early 2006 when Mr. Davis demanded the immediate return of all of his father's works of art.

**Security Interest**

Is the Artwork subject to a security interest? x yes    no.

Yes. As a matter of law, the nature of the consignment/bailment here created a security interest in Mr. Davis, the consignor/bailor.

If you checked "yes," attach all agreements, documents, instruments and other writings that support your assertion that the Artwork is subject to a valid, perfected security interest.

**Provide All Required Documentation**

Provide copies of any and all agreements, documents, instruments and other writings that support your Art Claim.

If you assert a security interest in any Artwork, provide any and all agreements, documents, instruments and other writings that support the assertion of that security interest.

**PLEASE READ THE FOLLOWING BEFORE SIGNING  
YOUR ART CLAIM FORM**

**By signing this Art Claim Form, you make the following certifications under penalty of perjury pursuant to 28 U.S.C. § 1746:**

- "I have been provided with a copy of the Protocol, and the exhibits thereto."
- "I have the full power and authority to make this Art Claim."
- "I am making this Art Claim under penalty of perjury pursuant to 28 U.S.C. § 1746."

Mr. Earl Davis

Name of Claimant:

By:

Earl Davis  
Signature

5/30/08

Earl Davis  
Print Name

Title

6 Horizon Road, Apt. 2906

Fort Lee, New Jersey 07024

Address

## Exhibit A

**Salander-O'Reilly Galleries, Inc.**

20 East 79 Street New York, NY 10021 Tel (212) 879-6606

August 29, 1994

Mr Earl Davis  
400 Allaire Avenue  
Leonia NJ 07605

Dear Earl:

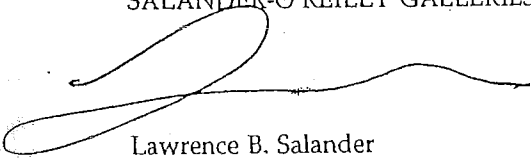
This letter should serve to confirm our conversation of August 15th, and subsequent amendment regarding works on paper, with respect to the following agreed-upon commission structure:

We agree that all paintings sold for up to the amount of \$1,000,000.00 (one million dollars) will be split 80% (eighty per cent) to Earl Davis and 20% (twenty per cent) to Salander-O'Reilly Galleries, Inc. We further agree that any sales amounts over \$1,000,000.00 (one million dollars) will be split 90% (ninety per cent) to Earl Davis, and 10% (ten per cent) to Salander-O'Reilly Galleries, Inc.

We also agree that sales of works on paper sold for up to the amount of \$20,000.00 (twenty thousand dollars) will be split 70% (seventy per cent) to Earl Davis, and 30% (thirty per cent) to Salander-O'Reilly Galleries, Inc. We further agree that any sales of works on paper in amounts above \$20,000.00 (twenty thousand dollars) will be split 80% (eighty per cent) to Earl Davis, and 20% (twenty per cent) to Salander-O'Reilly Galleries, Inc.

Best Regards,

SALANDER-O'REILLY GALLERIES, INC.



Lawrence B. Salander

## Exhibit B

**Salander-O'Reilly Galleries, Inc.** 20 East 79 Street New York NY 10021 Tel: 212 879-6606

*Cape Anne  
Call Bill*

☐ CONSIGNED TO: ☐ SOLD TO: ☐ RETURNED TO: ☐ SHIPPED VIA:  
☐ CONSIGNED FROM: ☐ PURCHASED FROM: ☐ RETURNED FROM:

RECEIVED FROM  
EARL DAVIS

DATE: 4.17.01

ARTIST:

TITLE:

DATE:

MEDIUM:

SIZE:

SIGNED:

NUMBER:

17 DRAWINGS BY  
STUART DAVIS

ADD'L INFO:

PROVENANCE:

LITERATURE:

EXHIBITED:

COST/NET:

SELLING P:

DEALER P:

RECEIVED BY  
*[Signature]*

SIGNATURE:

ARTFUL TRANSPORT LTD.  
P.O. Box 2083  
PETER STUYVESANT STATION  
NYC, NY 10009  
(718) 486-0181

~~INVOICE~~ RECEIPT

<p>CUSTOMER: SALANDER-OREILLY 20 E. 79th ST. N.Y.C. N.Y.</p>	<p>DATE MAY 5, 1999 JOB # 0505 TOTAL DUE PAID</p>
<p>PICK UP EARL DAVIS SOPHA BROS. STORAGE</p>	<p>DELIVER SALANDER-OREILLY</p>
<p>ITEM(S) 10 FRAMED STUART DAVIS DRAWINGS</p> <p>RECEIVED IN GOOD ORDER</p>	
<p>INSURANCE <del>NOT BY ARTFUL</del> LIMIT OF LIABILITY In consideration of the rate charged, it is agreed that the carrier's liability to \$250.00 per article or \$1000.00 per total shipment, unless a greater value is declared and an additional charge based on such higher value is paid by shipper and accepted by carrier in writing in advance of shipment. In the event glass, mirror, marble or other fragile articles are to be shipped, carrier undertakes no liability for damage. Received from Shipper the property described above, wrapped by Shipper, (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated above. CARRIER <u>SLMA</u> DATE <u>5.5.99</u></p>	<p>CHARGES START FINISH TOTAL HRS. @ /HOUR TOTAL TOLLS MATERIALS GRAND TOTAL</p>